California Public Employees' Retirement System
Office of Governmental Affairs
P.O. Box 942720
Sacramento, CA 94229-2720
TTY: (916) 795-3240
(916) 795-3689 phone · (916) 795-3270 fax
www.calpers.ca.gov

Agenda Item 6b

March 15, 2011

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. SUBJECT: AB 873 (Furutani) – As Introduced
Post-Separation Employment for State Retirement System Board and Staff

Sponsor: State Controller

II. PROGRAM: Legislation

III. ANALYSIS:

Summary

This bill would prohibit CalPERS and CalSTRS Board Members, administrators, executive officers, investment officers and general counsels from accepting a paid position, for the two years following their separation from the retirement system, from any employer with whom the former official was involved, both personally and substantially, in specified decisions related to retirement system contracts and investments valued greater than $10 million during the previous five years. It would not apply this prohibition to a former retirement system official that obtains employment from an entity whose principal market is unrelated to the individual's prior service. The bill would also prohibit these officials from accepting employment for a period of two years following their separation from the system, with any placement agent that has successfully placed an investment with either retirement system during the previous ten years.

Background

State Law Regarding Post-Separation Employment

State law currently provides two separate post-employment restrictions that generally apply to State officers and employees. The first is a lifetime restriction that permanently prohibits former State officials from being paid to appear in a proceeding on behalf of a third party when the former official participated in the same proceeding on behalf of the State. The second is a one year prohibition that restricts specified State officials, for one year after leaving State service, from being paid to represent others before their former agency or to influence the agency's decisions in specified proceedings.

In addition, a provision of the Public Employees' Retirement Law (PERL) requires individuals in specific CalPERS positions to wait two years before they may be paid to represent others before CalPERS.

These positions are:

- Board Member
- Chief Executive Officer
- General Counsel
- Chief Actuary
- Chief Investment Officer
- Investment officer or portfolio manager whose position is designated as managerial
- Deputy or Assistant Executive Officer

Finally, CalPERS employees and Board Members may not participate in governmental decisions that will affect entities with whom they are negotiating employment, or with whom they have an arrangement concerning future employment.

Federal Law Regarding Post-Separation Employment

With regard to activities such as lobbying, federal law sets a one year ban or cooling-off period for "senior employees," and a two year ban for "very senior employees," as well as a permanent ban on "switching sides" for executive branch employees who worked on a matter involving contracts, grants or lawsuits, while a federal employee.

In addition, a former official of a federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official was involved in the selection, or oversight of a contract to that vendor in excess of $10 million. The official may accept compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor with which the official had been involved.

Persons Affected	Type of Ban	Duration
State Officials/ Employees	Act as paid agent for any non-State entity in a proceeding in which she or he was personally and substantially involved as a State official.	Lifetime
State Officials/ Employees	Paid Appearance Or Communication To Influence Former Agency	One Year
CalPERS Board Members, Executives, and Supervisory Investment Staff	Paid Appearance Or Communication To Influence Former Agency	Two Years
Federal Officials/"Senior" Employees	Paid employment from a contractor as an employee, officer, director, or consultant if the employee had been involved in the award or oversight of the contractor.	One Year
Federal Officials/"Very Senior" Employees	Making lobbying contacts with agencies on official matters	Two Years
Federal Executive Branch Employees	Making lobbying contact with agencies on matters the official was substantially involved with during government service	Lifetime

Proposed Changes

Specifically, this bill would:

- Prohibit CalPERS and CalSTRS Board Members, administrators, executive officers, investment officers and general counsels from accepting a paid position, for the two years following their separation from the retirement system, from any employer with whom the former official was involved, both personally and substantially, in specified decisions related to retirement system contracts and investments valued greater than $10 million during the previous five years.

- Prohibit, for no less than two years, these specified individuals from accepting employment with any placement agent that successfully placed an investment with their former retirement system employer during the prior ten years.

- This legislation would not restrict a former CalPERS or CalSTRS employee from working for any entity whose principal market is unrelated to the individual's prior service.

Special Review Recommendations

On December 13, 2010, the Board received recommendations from a special review initiated to investigate the use of placement agents by outside firms managing the pension fund's investments. The recommendations addressed governance and operational matters at CalPERS, to help safeguard the institution and the assets held for its beneficiaries.

As it related to post-CalPERS employment, the review recommended:

> "A company doing significant business with CalPERS (or an agent of such a company) should not be permitted to hire, immediately upon their departure from CalPERS, former Board or staff members who materially participated in decisions relating to that company. To that end, we recommend that CalPERS call for legislation going beyond the minimum requirements of California law and adopt a "cooling-off period" for its former Board and staff members similar to that provided under federal law. Specifically, a CalPERS Board or staff member should be prohibited from working for any company or its agents during a two year period after termination of Board service or employment if, within the previous five years, CalPERS had an agreement with that company (including an agreement to manage funds on behalf of CalPERS) that exceeded $10 million in value and that Board or staff member was materially involved in awarding or managing that agreement or investment. Moreover, a Board or staff member should be prohibited from working for any placement agent during the cooling-off period if that placement agent placed an investment with CalPERS during the previous ten years and regardless of whether the Board or staff member was materially involved in the decision to invest."

At the February 2011 meeting, the CalPERS Board reviewed a number of proposals for the implementation of reform recommendations, and chose, at that time, to continue studying the Controller's legislation for future action.

Legislative History

2009 Chapter 301 (AB 1584, Hernandez) – Among other things, adds public retirement system board members, deputy and assistant executive officers to the officials and employees that may not act to influence the "issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property" with their former retirement board for two years after the end of their term of service on the board, or employment with the public retirement system. The bill also deletes the application of the two-year post-employment restriction for individuals that have served in designated positions for less than five years, and extends it to all designated positions, regardless of the person's length of service in that position. *CalPERS Position: Support.*

2007 Chapter 315 (AB 246, Torrico) – Prohibits a member or employee of a county retirement board from having any personal interest in the making of an investment for the board, or in the gains or profits that accrue from those investments. It also prohibits a county retirement board member or employee from selling or providing any investment product that would be considered a retirement fund asset of any county retirement system. *CalPERS Position: None.*

2003 Chapter 856 (SB 269, Soto) – Allows the CalPERS Board to determine the compensation of key positions without requiring the approval of the Department of Personnel Administration. These positions include the executive officer, the chief actuary, the chief investment officer, and other investment officers and portfolio managers whose positions are designated managerial pursuant to State civil service criteria. It also prohibits individuals that hold one of the specified positions for less than five years from acting to influence the "issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property" for two years after their separation from CalPERS. *CalPERS Position: Sponsor.*

<u>Issues</u>

<u>Arguments in Support</u>

According to the Author:

"Public trust and government accountability within the nation's largest pension systems are critical to any of the reform proposals that are on the table…Implementing a 'cooling-off period' would ensure that decisions being made by Board Members and staff are being made for the right reasons and not to encourage future employment opportunities."

Supporters argue that creating a cooling off period, during which a former CalPERS Board Member may not be hired with a special interest group, we decrease the possibility that decisions made while serving may be influenced by a potential job offer…Revolving door reforms are ways to improve public trust that do not add costs to the CalPERS budget.

Organizations in support: State Controller John Chiang (Sponsor), Common Cause, AFSCME, SEIU.

<u>Arguments in Opposition</u>

There is no opposition at this time.

<u>AB 873 Goes Farther than Federal Law</u>

While the independent review recommended that CalPERS seek legislation to strengthen the existing State requirements by establishing a "cooling-off" period for former Board and staff members similar to that provided under federal law, its specific recommendations, as well as those of AB 873, differ substantially. For example, its proposed cooling-off period is twice as long as federal law.
In addition, SB 873 "cooling-off" is for two years after separation from employment, while the federal law "cooling-off" period is for a period of one year after a covered employee participated in the specified activity.

CalPERS, as the largest pension fund in the United States, has contracts and other arrangement with hundreds of external investment managers and contractors. While the AB 873 proposed restrictions follow the spirit of the federal law, by doubling the cooling-off period, they substantially limit the ability of investment and other professional staff, once they leave CalPERS, to maintain their skills and secure employment in their chosen field. This may impair CalPERS ability to hire and retain top performing investment, actuarial and legal professionals to manage the assets of the Public Employees Retirement Fund and ensure employer contributions are minimized.

Without taking any position on the bill, CalPERS staff has had discussions with the State Controller's Office on potential amendments to this bill, in an effort to identify restrictions that would accomplish the intended purpose without unduly limiting our ability to recruit and retain talented and skilled staff. Staff anticipates that it will provide more information at time of the Committee meeting.

Staff seeks input from the Board regarding the applicability of the proposed legislation to Board members.

Policy vs. Statute

CalPERS has taken a rigorous approach to re-shaping its business practices, including the commissioning of an in-depth special review, the establishment of an Ethics Hotline, and sponsoring legislation that regulates placement agents. Placing this change in statute should provide the Fair Political Practices Commission with enforcement authority. A CalPERS policy violation by a former employer would be difficult to enforce, at best.

Legislative Policy Standards

The Board of Administration's Legislative Policy Standards do not directly address the issues posed by AB 873.

IV. STRATEGIC PLAN:

This is not a product of the CalPERS strategic plan, but an ongoing responsibility of the CalPERS Office of Governmental Affairs.

V. RESULTS/COSTS:

Program Costs

Unknown

Administrative Costs

Unknown

DANNY BROWN, Chief
Office of Governmental Affairs

PATRICIA K. MACHT
Director, External Affairs